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09/857,735	06/08/2001	Murray Edward Bruce Leighton	THOM-0014	9850

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EXAMINER

GARBE, STEPHEN P

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 10/07/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/857,735

Applicant(s)

LEIGHTON, MURRAY EDWARD  
BRUCE

Examiner

Stephen Garbe

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*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --***Period for Reply****A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on \_\_\_\_ .
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-25 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_ .  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)                    4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_ .  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)                    5) Notice of Informal Patent Application (PTO-152)  
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_ .                    6) Other: \_\_\_\_ .

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1. The drawings are objected to under 37 CFR 1.83(a) as failing to illustrate a seal has marginal flanges, etc., as recited in claims 14 and 16. No new matter may be entered.
2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-25 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The disclosure is non-enabling because it does not explain how the opening is enlarged, as stated in the last two lines on page 7. Since the peel seal extends for only the width of the tag 17, it cannot be determined how the remainder of the portions of the bag mouth on the opposite sides of the tag are opened. Thus, the disclosure does not enable one of ordinary skill in the art to use the invention.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. This claim is inaccurate, and, thus, indefinite, because opening a zone of the seal does not permit access to the interior of the bag. This claim is further inaccurate because it implies that the entire tag is withdrawn from the bag. However, only part of the tag is withdrawn, and that part is not recited.

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6. Claims 2-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. These claims are indefinite for the same reason as claim 1 because they include all of its limitations.

Claim 4 is further indefinite because there is no antecedent for "the outside surfaces," "the outside legs of the tag" or for "the inside legs." The phrase "being sealed to the seal and/or to the sides of the bag" is inaccurate and confusing because the legs of the tag are sealed to the bag sides only at the seal and not to other parts of the sides, as implied. Furthermore, the legs are not sealed to a seal; they are sealed to the sides of the bag. In addition, it is unclear what "arrangement" is required by the phrase "arranged to be withdrawn from between the outside legs." Does this require more than merely being located between the outside legs---such as being peelably sealed to the outside legs? If so, this should be in the claim.

Claim 7 is objected to because "provided" is misspelled.

Claim 12 is further indefinite because it is unclear whether a reclosable zipper is required. However, it does not appear that the bag could have a reclosable zipper seal without having a reclosable zipper. If the zipper is required, it should be recited. If not, this claim should be canceled because there can be no reclosable zipper seal without a reclosable zipper.

Claim 14 is further indefinite because it is inaccurate. The zipper seal does not have marginal flanges, etc., as claimed, because a seal is merely a connection between two parts.

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7. Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. This claim is inaccurate, and, thus, indefinite, because opening a zone of the seal does not permit access to the interior of the bag. This claim is further inaccurate because it implies that the entire tag is withdrawn from the bag. However, only part of the tag is withdrawn, and that part is not recited.

8. Claims 16-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. These claims are indefinite for the same reasons as claim 15 because they include all of its limitations.

Claim 16 is further indefinite because a seal cannot have flanges and cannot be sealed to anything. A seal is merely a connection between two parts.

Claim 19 is further indefinite because there is no antecedent for "the inside legs of the tag."

Claim 20 is further indefinite because there is no antecedent for "the host material."

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1, 2, 15, 17, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Grundschober et al., United States Patent No. 3,680,689

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(Grundschober). Element 5a of Grundschober is a tag which can be withdrawn and used to open a zone of the bag.

11. Claims 1-3, 15, 17, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Bell et al., United States Patent No. 4,936,456 (Bell). Element 10 of Bell is a tag which can be withdrawn to permit access to a bag.

12. Claims 1, 2, 9, 15, 17, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Moore, United States Patent No. 2,262,111. Moore discloses all structural features required by these claims including a tag 25 centrally located within a seal. Regarding claim 9, tag 25 is laminated with a thermoplastic lacquer.

13. The remaining patents are cited to show other, similar devices.

14. Any inquiry concerning this application or proceeding should be directed to Stephen Garbe who can be reached at 703-308-1207. The examiner can normally be reached Monday-Thursday between the hours of 7:15 and 4:45 and alternate Fridays between the hours of 7:15 and 3:45.

15. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on 703-308-2572.

16. The fax phone numbers for Technology Center 3700 are 703-872-9302 for papers filed in response to a non-final Office Action and 703-872-9303 for papers filed in response to a Final Office Action.

17. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist, whose telephone number is 703-308-1148.

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Stephen P. Garbe  
Primary Examiner  
Group 3720